

Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-154746-06
Date: August 15, 2007

Legend:

Decedent	=
Company	=
Partnership	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 2	=
A	=
B	=
C	=
D	=
E	=

Dear :

This is in response to your letter dated November 17, 2006, submitted by your authorized representatives, and subsequent correspondence, requesting rulings under § 2642(g) of the Internal Revenue Code and §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

The facts submitted and the representations made are summarized as follows. On Date 1, in Year 1, Decedent transferred A percent of capital stock in a subchapter C corporation (Company) to each of her two grandsons. Date 1 is a date that is after September 25, 1985 but before October 23, 1986. The value of each of these gifts is represented to be less than \$ 2,000,000.

Decedent retained a tax professional to prepare her Year 1 Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting the Date 1 gifts. In

preparing the Form 709, the tax professional inadvertently failed to allocate or failed to advise Decedent to allocate her generation-skipping transfer (GST) tax exemption to the Date 1 gifts.

On Date 2, Decedent formed an irrevocable trust (Trust) for the benefit of her daughter and her daughter's issue. Trust has GST potential. On Date 3, in Year 2, Decedent transferred a B percent interest in a general partnership (Partnership) to Trust.

Decedent retained a qualified tax professional to prepare her Year 2 Form 709 reporting the Date 3 transfer to Trust. In preparing the Form 709, the tax professional inadvertently failed to allocate or failed to advise Decedent to allocate her GST tax exemption to the Date 3 transfer. The failure to allocate GST exemption to the Date 3 transfer was discovered several years after Decedent's death when Decedent's daughter sought estate planning advice. It has been represented that there have been no other transfers to Trust. Decedent's Year 2 Form 709 was audited by the Internal Revenue Service. As a result of the audit, the value of the Date 3 transfer was \$C.

Decedent died on Date 4. Upon Decedent's death, death benefits totaling \$D were paid to Decedent's grandsons from two annuities Decedent owned at her death. Pursuant to § 2632(e), \$D of Decedent's available GST exemption was automatically allocated first to the death benefits paid to the grandsons and second, the remaining unused portion of Decedent's GST exemption, \$E, was allocated to Trust. Except for the transfers in Year 1, Year 2, and the death benefits paid to her grandsons, it has been represented that Decedent did not make any other transfers to skip persons or trusts with GST potential during her lifetime or as a result of her death.

Decedent's daughter, as executrix of Decedent's estate, is requesting the following rulings:

1. Decedent's Date 1 gift to her grandsons of an A percent interest in the capital stock of Company is exempt from the GST tax pursuant to § 1433(b)(3)(A) of the Tax Reform Act of 1986.
2. Decedent's estate is granted an extension of time pursuant to §§ 2642(g), 301.9100-1, and 301.9100-3 to allocate Decedent's available GST exemption of \$E to the Date 3 transfer to Trust, and that the GST exemption allocated to the transfer will be effective as of the date of the transfer.

Law and Analysis:

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) defines a generation-skipping transfer as: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 1433(b)(3)(A) of the Tax Reform Act of 1986, P.L. 99-514 (1986), (Act), provides that for purposes of chapter 13, the term “direct skip” shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent that the aggregate transfers from such transferor to such grandchild do not exceed \$ 2,000,000.

Section 26.2601-1(a)(1) of the Generation-Skipping Transfer Tax Regulations provides that, except as otherwise provided in this section, the provisions of chapter 13 apply to any generation-skipping transfer (as defined in § 2611) made after October 22, 1986.

Section 26.2601-1(a)(2) provides that, solely for purposes of chapter 13, an inter vivos transfer is treated as if it were made on October 23, 1986, if it was (i) subject to chapter 12 (regardless of whether a tax was actually incurred or paid); and (ii) made after September 25, 1985, but before October 23, 1986. For purposes of this paragraph, the value of the property transferred shall be the value of the property on the date the property was transferred.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines “applicable rate” as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer. Section 2642(a) provides the method for determining the inclusion ratio.

Section 2612(c)(1) provides that the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a)(1) provides that for purposes of chapter 13, the term “skip person” means a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual’s estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(b)(2) provides that an allocation of GST exemption to property transferred during the transferor’s lifetime, other than in a direct skip, is made on Form 709.

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated first, to property which is the subject of a direct skip occurring at such individual's death, and second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) – (A) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an ETIP, its value at the time of the close of the estate tax inclusion period (ETIP), and (B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an ETIP, on and after the close of such ETIP.

Section 2642(f)(1) provides that, for purposes of determining the inclusion ratio, if— (A) an individual makes an inter vivos transfer of property, and (B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of § 2035) any allocation of GST exemption to such property shall not be made before the close of the ETIP (and the value of such property shall be determined under § 2642(f)(2).

Section 2642(f)(2)(A) provides that in the case of any property to which § 2642(f)(1) applies that is included in the gross estate of the transferor (other than by reason of § 2035), the value of such property is its value for purposes of chapter 11.

Section 2642(f)(3) defines the term "estate tax inclusion period (ETIP)" as any period after the transfer described in § 2642(f)(1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall not extend beyond the earlier of--(A) the date on which there is a generation-skipping transfer with respect to such property, or (B) the date of the transferor's death.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2624(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Ruling 1:

Decedent's Date 1 transfers to her grandsons were made prior to January 1, 1990, and the aggregate transfer to each grandson is represented to not exceed \$2,000,000. Accordingly, based upon the facts submitted and the representations made, we

conclude that, pursuant to § 1433(b)(3)(A) of the Act, Decedent's Date 1 transfers to her grandsons are not considered direct skips and chapter 13 of the Code does not apply to these transfers.

Ruling 2:

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Decedent's estate is granted an extension of time of sixty (60) days from the date of this letter to allocate Decedent's GST exemption of \$E to the transfer made to Trust on Date 3. The GST exemption allocated to the transfer will be effective as of the date of the transfer. The allocation should be made on a supplemental Form 709 for Year 2 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we are expressing no opinion as to whether the Date 3 transfer of the B percent interest in Partnership to Trust is subject to an estate tax inclusion period under § 2642(f).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea

William P. O'Shea
Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosure: Copy for § 6110 purposes